

### **REMARKS**

This letter is in response to the Examiner's Action dated 12 April 2007.

Applicants have amended the claims. Claim 1 has been amended to recite that the crust has an irregular profile as a result of its manufacture. Applicants have also amended the claims to recite that the crust edge comprises a registration means engaging edge and the edge has an irregular profile as a result of its manufacture. Support is found at paragraphs [0012] and [0035] of the published application. The amendment to claims 3 is reflected in the claims as filed. The claims have been amended to recite in claim 52 that the risen, expanded and baked crust obtains toast marks substantially similar to a brick-oven fired conventional hand formed crust and is made by automatic dough production machinery. Support for the amendment is found at paragraph [0008] lines 9-11 of the application. No new matter is included by amendment.

On page 2 of the Examiner's Action, Applicants note the Examiner's comments regarding the restriction action. Applicants have no comment with respect to the restriction and the elected claims.

The Examiner questions the data on page 10 with respect to the percentages. Applicants respectfully point out that the application contains two different types of formulations with percentages. Both types are commonly used in the industry. In one type of formulation, the percentages are based on the formulation as a whole. In the second type of formulation, the percentages are based on the flour in the formulation. This percentage is also known as a baker's percentage. In such a formulation, the percentages appear to be high compared to a percentage based on the total formulation. That is true since the basis of the percentage is the flour, which typically is a large proportion of the formulation but since it is generally somewhat more than half of the formulation, the other percentages tend to be artificially high. Accordingly, the 65-75 bakers' % moisture content is substantially the same as the 35-40 formulation % moisture content. The Examiner recognizes that the 65-75% moisture is a baker's percentage, while the 35-45% is a percentage based on the formulation as a whole. Accordingly, there is no inconsistency in these numbers and they are presented because one of ordinary skill in the art,

when using the application as a teaching reference, will typically be inclined to require the baker's percentages. Accordingly this specification supports these ranges.

The Examiner has rejected claims 3, 6, 11, and 52 under 35 U.S.C. § 112, 2nd paragraph arguing that certain claims are indefinite. With no clear reasoning why the claims are indefinite, Applicants respectfully traverse.

Overall, Applicants assert that it is insufficient for the Examiner to simply assert that something is indefinite without some clear rationale or basis. A blanket assertion of indefiniteness with respect to these conventional terms is not understood. An indefinite claims has no clear scope (e.g.) due to an ambiguity. Applicants assert that the Examiner has not maintained a prima facie basis for these rejections since these terms are simple, well understood terms in the baking arts and the Examiner has not explained any irrational basis for a problem for the indefiniteness problem.

The Examiner asserts that the term "irregular profiled" is indefinite. Applicants respectfully point out that the term in the claim is "irregular profile", not "profiled". The Merriam-Webster Collegiate<sup>®</sup> Dictionary defines irregular substantially as lacking perfect symmetry or evenness such as an irregular coastline, or lacking continuity or regularity especially of occurrence or activity, such as an irregular employment. We agree with that definition for this application.

Applicants do not understand why that term is not understood by the Examiner. Irregular means that the profile departs from a regular circular profile used with typical pizzas. The term "irregular" is discussed in detail in the specification at page 3, line 24; page 4, line 11; page 14, line 4; page 22, line 16; and an irregular profile is illustrated in the Figures, in particular in Figures 2 and 4 which illustrate that the edge of the pizza is not a simple smooth curve or straight line but forms an irregular sinusoidal-like edge. Applicants believe that based on the common definition, specification and figures in the application, the term "irregular profile" is well understood.

The Examiner has not explained in any sufficient way why the term "at least 5% of the surface can depart from the planar nature". Certainly 5% is not indefinite, surface is not indefinite, planar is not indefinite. The phrase simply indicates that the surface is non-planar such that at least 5% of the surface is not within the plane of the crust. Applicants see no inconsistency in this language and believe it is clearly definite.

With respect to claim 52, Applicants have amended claim 52 to obviate the Examiner's rejection.

The Examiner has rejected claims 1-2, 4-6, 9-10 and 45-47 under 35 U.S.C. §103(a) over Alessandro EPA Patent No. 691078. The Examiner has failed to assert a prima facie case of unobviousness since, at least, the crust engaging means, the irregular profile and the oil content for the formulation, does not appear in the reference, Applicants respectively traverse the rejection.

Before discussing Alessandro in detail, Applicants assert that the invention involves a selection of a unique and specific dough formulation that was chosen to work well with a selection of a specific unique crust profile. The Examiner must show that the conventionality of the unique formulation and the unique crust profile based on a review of the prior art without, substantial modification or experimentation. Applicants claim includes the following elements: a flour-based formula comprising 65-75 wt% moisture, 0.5 to 2.0 wt% sugar, less than 2 wt% oil and a par-baked crust that has a certain expansion characteristic. This unique crust is used with a unique crust profile. The Examiner should note that the formulation in Alessandro shows a baker's percentage on the table in column 2, page 2.

Alessandro shows a conventional, machine made round pizza. More importantly, the patent teaches a regular edge and a dough formulation containing a 4-5 wt% oil. The Alessandro formulation is clearly designed to obtain a certain automated machine based production of the formulation and any modification to the formation will be understood to reduce the utility of the material. There is nothing in Alessandro or any of the other prior art suggested by the Examiner that would indicate that a crust could be made with less oil and certainly not less than 2 wt% oil. There is nothing in Alessandro or any of the other prior art suggested by the Examiner that would indicate that a crust could be made with the claimed profile.

The Examiner argues that the reduction in oil is an obvious modification to obtain:

"a texture and oil content desired".

Without more, the art recognizes that simply reducing oil content is detrimental to product quality and testing. Such a crust formulation when baked is generally tougher, denser and has

reduced open cell structure. Such a crust, with reduced oil is more difficult to mix, more difficult to sheet or form and is more difficult to release from baking pans or other equipment.

The Examiner's rationale is unsatisfactory since it is not based on the art but is based on the Examiner's unsupported opinion.. The rejection does not obtain a prima facie of obviousness since there is no indication in Alessandro that changing the oil can modify texture or provide any positive result. Such a reduction in oil is as likely to harm the product as any other result. Applicants have shown in the application that the resulting crust has a substantial increase in expansion and baked color as discussed at paragraphs [0057-0059] of and Figures 3-5 of the published application. Such a surprising result supports inventiveness.

The Examiner argues that it is obvious to use bread crumbs however the Examiner has cited no authority for that proposition.

The Examiner has asserted that the shape is a matter of design choice without citing any authority to support that decision. There is nothing in the art about the crust profile. The Examiner has not indicated why the skilled artisan would combine the unique formulation of the claims with the unique profile of the crust. The Examiner is under an obligation to support rejections with evidence that a wide variety of shapes is available in the art. In the absence of such evidence the Examiner's rejection must be withdrawn. The Examiner states:

"When the crust has a square shape, it is obvious that the crust will have a four-fold symmetry."

This comment by the Examiner makes it clear the Examiner does not understand the nature of the invention. Applicants' claims require generally square or rectangular crust with an irregular edge. A four-fold symmetry is not obtained in a pizza with an irregular edge unless each irregular edge is deliberately made to be identical. Simply making an arbitrary irregular edge will not result in a four-fold symmetry. This is particularly true since Applicants' crust is not as the Examiner asserts simply square, but has a unique edge. The Examiner's attention is directed to Figures 1A, 1B and 4. There is nothing in the art that suggests that the edges can be made irregular and that the edges are made to a similar profile such that there is a four-fold symmetry.

The Examiner states:

"It is obvious the crust has the degree of expansion claimed because it is made of the same dough as claimed."

The statement is not understood. The Examiner admits the crust is not the same since the oil is different. If the Examiner is arguing that the dough is the same as the prior art, the Examiner is not correct since the Examiner has admitted that the oil content is different. Since there is substantially less oil, the Examiner can not assert that the expansion will be similar. Further as discussed above the dough has displayed a degree of expansion that is unexpected in light of the art. Applicants have shown in the application that the resulting crust has a substantial increase in expansion combined with an improved baked color as discussed at paragraphs [0057-0059] of and Figures 3-5 of the published application. Such a surprising result supports inventiveness.

The Examiner states:

"It is not clear what applicant meant by 5% of the surface departing from planar nature; however, whatever the shape is, it would have been obvious to one skilled in the art to form the crust in shape. This is a variation in design without any effect on functionality of the product. Variation in design would have been an obvious matter of choice. It would have been obvious to form the edge in any dimension depending on the size of the crust desired. This would have been within the determination of one skilled in the art."

The Examiner is wholly incorrect in his assertion. Applicants have discussed in the specification that the use of the irregular crust with the fourfold symmetry. This is combined with the lack of planarity. This is also combined with a registration means that aids in improving pizza productivity and provides substantially improved product characteristics. The fillings can be accurately registered or positioned on the crust using the shape and edge of the crust. A high quality pizza product can be obtained from the shape of the edges and the non-planar nature of the crust surface. This quality product mimics or is similar to a hand-thrown pizza. This aspect has not been achieved in the prior art because of the nature of the prior art crusts. Accordingly, there is a substantial degree of functionality with respect to the manufacture of the product that is

directly obtained from the edge shape symmetry, planarity and use of a crust registration means as claimed.

Accordingly, the Examiner has failed to obtain a prima facie case and a large number of the elements of the claim have not been shown to be conventional in the art.

The Examiner has rejected claims 3, 7-8, 11-21, and 52 under 35 U.S.C. §103(a) over Alessandro in view of Ricke et al., United States Design Patent D 376466. Applicants respectfully traverse the rejection.

Applicants respectfully traverse the rejection since Ricke does not provide any of the claimed elements missing from Alessandro. Ricke shows a round crust with a regular scalloped edge. The Ricke reference appears to show the regular scalloped edge in a circular pizza crust. More substantial irregularity is shown since the scallops appear to be similar in size and regularly distributed around the edge of the pizza crust. The reference clearly does not show a square or rectangular profile with an irregular edge having a fourfold symmetry or registration means as required by the claims. Further this round shape does not lend itself to the manufacturing technology that is the basis of the claimed crust. Accordingly, any combination of Alessandro and Ricke does not satisfy the claims and the Examiner has failed to raise a prima facie case of obviousness.

The Examiner also cites Schiable, United States Patent No. 6,365,210. Applicants are unsure with respect to what rejection the Examiner intends with respect to this reference. However assuming the Examiner intends to combine Alessandro, Ricke and Schiable in a rejection of the claims, Applicants assert that Schiable is not relevant to the claimed pizza. Schiable shows a substantially round pizza. See Figure 15 of the patent. The Schiable patent is primarily directed to a machine for the automated manufacture of pizzas. The disclosure does not appear to be related to any particular formulation and is limited to the round shape. Accordingly, Schiable does not supply any missing element from the rejection.

Applicants assert that the Examiner has not specifically commented on claim 11. The generic comment about certain aspect of the art does not address the unobviousness of the combination of elements in claim 11. Claim 11 is allowable as presented in the amendment.

Applicants have demonstrated the unobviousness of claims 1 and 11 of the application. Examiner simply cannot argue that the oil content and that the shape of the pizza are obvious

without some basis for modifying the crust of the prior art to that shape and formulation. Simply saying it is within the skill of the art is insufficient.

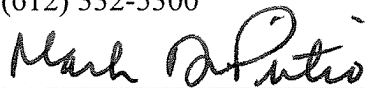
Many of the dependent claims are also independently on their own merits. Applicants will discuss specific dependent claims; however Applicants believe that all dependent claims are independently patentable.

Claim 7 and 14 requires a sinusoidal profile not shown in the art. Claim 8 and 15 recites a series of connected line segments which is not shown in the art. Claim 9, 16 and 21 recites a specific thickness or formulation and 1.3 to 1.9 wt % oil. There is nothing in the art that suggests modifying a crust to that dimension and oil content is obvious. The formulations in the prior art are similar to Alessandro and require substantial oil or other lipid content. Claim 10 and 17 recites the application of a specific amount of bread crumbs per pound of crust. The art does not suggest such a proportion. Claims 18 - 20, 45 -47 and 51 recite dimensions that are specifically designed to cooperate with the provide registration means formulation and shape to obtain a unique desirable crust with respect to the registration means, formulation and shape. The combination of these dimensions with the independent claims is additionally unobviousness.

In view of the above amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Reconsideration and Notice of Allowance are solicited. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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